UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/643,983	08/23/2000	Pal Frenger	2380-249	9921

			EXAMINER
23117	7590	06/28/2005	TORRES, JOSEPH D

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ART UNIT	PAPER NUMBER
2133	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action *Before the Filing of an Appeal Brief*	09/643,983	FRENGER ET AL.
	Examiner	Art Unit	
	Joseph D. Torres	2133	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>13 June 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>13 June 2005</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-11,13-16,18-23,26,28-39,41-47,50,52 and 53</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

JOSEPH TORRES
PRIMARY EXAMINER

Joseph D. Torres, PhD
Primary Examiner
Art Unit: 2133

U.S. Patent and Trademark Office
PTOL-303 (Rev. 4-05)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20050624

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant contends, "This is quite apparent, even viewing Ward's Fig. 3A in which 'arrows' from Table 28 are directed to every one of the processing blocks, indicating that each operation performed is dynamically adjustable depending upon the current channel condition".

The Examiner asserts that is a complete mischaracterization of Figure 3A of Ward in that it implies that the switching of all processors in Figure 3A of Ward must respond to channel conditions. The Abstract in Ward explicitly states, "The system continuously monitors radio channel quality on both the uplink and the downlink, and dynamically adapts the system's combination of speech coding, channel coding, modulation, and number of assignable time slots per call to optimize voice quality for the measured conditions", which means exactly what it says that the particular processing of a processing unit need not be changed responsive to channel conditions. Table II in col. 9, lines 5-15 of Ward clearly spells this out. In the case that channel conditions require a switch from type 2 to type 3 communications or vice a versa the speech coder does not switch its encoding rate, but maintains its coding rate, that is, under certain channel conditions the speech encoder maintains its particular mode of operation independent of the channel condition at that time. Table II in col. 9, lines 5-15 of Ward explicitly teaches that during switching from type 2 to type 3 communications, the speech preprocessing coder 21 in Figure 3A operates identically to a Prior Art speech preprocessing coder 21 in Figure 3 in Ward and the operation of speech preprocessing coder 21 in Figure 3A during switching from type 2 to type 3 communications does not depend on channel conditions.

Furthermore, only the switching of speech pre-processing depends on channel conditions. The actual pre-processing of speech never depends on channel conditions since LDCELP, ADPCM, VSELP and EVCELP encoders preprocess speech data according to specific algorithms to produce speech-encoded data independent of channel conditions. That is, only the switching of pre-processing units in Figure 3A of Ward can be dependant on channel conditions (Note: as shown above switching of pre-processing units can also be independent of channel conditions), the actual LDCELP, ADPCM, VSELP and EVCELP preprocessing algorithms used to produce speech encoded data and implemented by speech preprocessing coder 21 in Figure 3A do not depend on channel conditions.

The Applicant contends, "There is no disclosure or suggestion in Ward that some operations not be performed before the channel condition is determined".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Nowhere does claim 1 recite, "performed before the channel condition is determined". Claim 1 only recites, "wherein the pre-processing does not depend on the current channel condition".

The Applicant contends, "This Ward never discloses, explicitly or 'inherently,' pre-processing data packets including performing a first coding operation on those data packets independently of the current channel condition".

The actual pre-processing of speech never depends on channel conditions since LDCELP, ADPCM, VSELP and EVCELP encoders preprocess speech data according to specific algorithms to produce speech-encoded data independent of channel conditions. That is, only the switching of pre-processing units in Figure 3A of Ward can be dependant on channel conditions (Note: as shown above switching of pre-processing units can also be independent of channel conditions), the actual LDCELP, ADPCM, VSELP and EVCELP preprocessing algorithms used to produce speech encoded data and implemented by speech preprocessing coder 21 in Figure 3A do not depend on channel conditions.

In addition, Figure 3 in Ward is an explicit teaching whereby speech coder 21 cannot be switched before the actual preprocessing so even the switching or the lack thereof in Figure 3 is independent of channel conditions.

The Applicant contends, "That Ward could possibly be modified so that the speech coder 21 is not adjustable based upon current channel conditions is no where disclosed or suggested in Ward".

The Examiner would like to point out that the Applicant's argument makes no sense since adjustable, adaptable, amendable and modifiable are all synonyms basically meaning the same thing. Furthermore col. 8, lines 65-67 in Ward teach that Table II in col. 9, lines 5-15 of Ward is only an example for using the adaptive mechanisms in Figure 3A. Col. 10, lines 30-35 in Ward clearly suggest various changes and modifications still fall within the scope of the teachings in the Ward patent. Not only is an adaptive device modifiable, but also Ward clearly suggests modifications to the adaptive device and clearly states that such changes fall within the scope and the spirit of Ward's intended teachings..